IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13479 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

KAMLESH BABULAL MEHTA

Versus

CHIEF CONTROLLER, REVENUE AUTHORITY,

Appearance:

1. Special Civil Application No. 13479 of 2000

MR PJ KANABAR for Petitioner No. 1

Mr.Kothak, Asst.GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 12/04/2002

ORAL JUDGEMENT

Rule. Mr.Kothak, Ld.AGP appears and waives service of rule on behalf of respondents. With the consent of parties matter is taken up for final hearing.

2. The present petition is preferred by the petitioner against the order passed by the Deputy Collector and its confirmation by the Chief Revenue Controlling Authority in the appeal for recovery of balance stamp duty.

3. Mr.Kanabar for the petitioner submits that though the date of hearing of appeal was fixed the petitioner did not receive any communication regarding hearing of the appeal and as a result thereof the appeal has been decided without giving opportunity of hearing to the petitioner. He further submitted that the order is a cyclostyled order and there is no independent application of mind on the facts of the present case though the Chief Revenue Controlling Authority is acting as a quasi judicial authority. He, therefore, submitted that the order is in breach of principles of natural justice and is not a speaking order.

4. Mr.Kothak for the respondents is not in a position to point any proof of giving intimation of the date of hearing fixed for the petitioner. Mr.Kothak pointed out the affidavit in reply filed by the Deputy Collector on behalf of respondents.

5. Considering overall facts and circumstances of the case and rival contentions of the parties, I am of the primafacie view that it is mandatory for the Chief Revenue Controlling Authority to intimate the date of hearing to the petitioner concerned and to decide the appeal. In the absence of any proof produced by the respondents regarding the intimation given to the petitioner for hearing of the appeal, it can be said that the order has been passed without giving opportunity of hearing to the petitioner. When the quasi judicial authority is deciding the appeal and when the hearing has not been given the order would be in breach of principles of natural justice. At the same time, Mr.Kanabar is also right in contending that the order is not a speaking order. The perusal of the order shows that it is a stereotype order and passed without proper application of mind. It is well settled that the quasi judicial authority when exercises powers he must record the reasons as to how and in what manner the decision is arrived at so that the party concerned is communicated about the same and that is why the speaking order is must. In the present case perusal of the order shows that no reasons are recorded and therefore the order can not be sustained even on the second ground also.

6. Considering the above, the order dated 25.9.97

passed by the Chief Revenue Controlling Authority in appeal is quashed on the ground that it is passed without giving opportunity of hearing to the petitioner and the same is not a speaking order. At the same time, it is clarified that it will be open to the Chief Revenue Controlling Authority to give opportunity of hearing to the petitioner and decide the appeal afresh and pass speaking order.

7. Rule is made absolute accordingly with no order as to costs.

12.4.2002 (JAYANT PATEL,J)